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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,886	11/21/2003	Khanh Vi Ngo	TUC920030160US1	5141
7590	02/18/2005		EXAMINER	
John H. Holcombe IBM Corporation Intellectual Property Law 8987 E. Tanque Verde Rd. #309-374 Tucson, AZ 85749-9610			CRAWFORD, GENE O	
			ART UNIT	PAPER NUMBER
			3651	
DATE MAILED: 02/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/720,886	NGO, KHANH VI
Examiner	Art Unit	
Gene O. Crawford	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 10-16, 26-32, 42-48 and 58-64 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9, 17-25, 33-41 and 49-57 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachments(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/21/2003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 10-16, 26-32, 42-48 and 58-64 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 18, 2005.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6-9, 22-25 and 38-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said failed accessor" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "said failed accessor" in line 2. There is insufficient antecedent basis for this limitation in the claim. It appears that applicant meant the claim to depend from claim 6.

Claim 22 recites the limitation "said failed accessor" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 38 recites the limitation "said failed accessor" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 39 recites the limitation "said failed accessor" in line 2. There is insufficient antecedent basis for this limitation in the claim. It appears that applicant meant the claim to depend from claim 38.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 17-21, 33-37 and 49-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Dimitri et al.('490).

The automated data storage library disclosed by Dimitri et al. includes all the claimed features and in particular includes: (**claims 1, 3, 17, 19, 33, 35, 49, 51**) a plurality of storage shelves 40; at least one storage drive 33, 34, 36; a plurality of accessors 21, 22; a library controller 11 for operating the accessors that in response to detection of restricted movement of an accessor at a position along the at least one path determines a range of motion of the other accessor avoiding interference with the accessor having restricted movement, in that both accessors locations are detected and their subsequent movements are determined based on selected jobs to avoid interference (column 5, lines 53-59); (**claims 2, 18, 34, 50**) a plurality of frames R-1 thru R-5 in sequence, the controller detecting a frame position of respective accessors

(column 5, lines 15-17); and (**claims 4, 5, 20, 21, 36, 37, 52, 53**) the storage frames including columns along the at least one path (figures).

Allowable Subject Matter

6. Claims 6-9, 22-25 and 38-41 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter: an automated data storage library including the unique features of 'operating one of the plurality of accessors to attempt to move a failed accessor and detecting the restricted movement by failure to move the failed accessor' in combination with the rest of the claim language is not taught or fairly suggested by the prior art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are cited to show the art with respect to data storage libraries having accessor failover protection systems: Dimitri et al.(2), Platt et al., and Ostwald et al.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene O. Crawford whose telephone number is 703/305-9733. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 703/308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gene O. Crawford
Primary Examiner
Art Unit 3651
